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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,851	08/13/2001	William James Harrison	ACS-55967 (27001)	8276

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EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/928,851	Applicant(s) HARRISON ET AL.	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-15, 17-20, 22-31 and 33-40 is/are pending in the application.
- 4a) Of the above claim(s) 5, 7, 15, 18, 27, 33 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10, 12-14, 17, 19, 20, 22-26, 28-31, 34, 35 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 24, 2004 has been entered.

Claims 5, 7, 15, 18, 27, 33 and 36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 6.

Claims 1-4, 6, 9, 10, 12-14, 19, 20, 22-26, 28-31, 34, 35 and 37-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hansen et al. (5,928,280). Note the attached appendix A, which depicts the embodiment of Hansen et al. described in col. 7, lines 13-16 wherein lines were added to the figure to depict the additional connecting sections described in col. 7, lines 13-16. In this embodiment, Hansen et al. disclose a plurality of rings wherein each ring includes a plurality of triangular cells, each cell including two V struts of different amplitudes (one V strut

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depicted as solid while the other depicted as striped with a single cross-hatching) and a connecting element (depicted with double cross-hatching) joining the plurality of rings by connecting the end of one cell of one ring to the end of the cell of an adjacent ring. In this embodiment, each cell is divided into two halves by a connecting element extending between apexes 4 and 6. Although each cell is so divided, the claims do not preclude a member from so dividing the cell. Although the V strut depicted as solid is not a perfect V, the V struts of applicant's invention are not perfect V's either, since they include a curvature along the legs of the V as well as a rounded apex which are absent from a perfect V. Thus, the term "V strut" used in this application is considered to mean a shape similar to a V. The strut depicted as solid is clearly very similar to a V. Alternatively, it would have been obvious that the Hansen et al. struts are V struts for these reasons. As to claims 2, 25, 29, 34 and 35, the Hansen et al. ends of the V struts coincide at enlarged areas since the end portions of the struts depicted as solid have an enlarged width which inherently reduces stress concentrations. As to claims 3, 4, 14 and 19, the rounded point (col. 7, lines 10-11) of the Hansen et al. strut is curved and has a radius. As to claim 10, the Hansen et al. connecting elements that join adjacent rings are

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located at the small angle vertices. As to claims 28 and 31, the cells 2 of Hansen et al. are "triangular" as claimed even though they are not perfect triangles. The cells of applicant's invention are not perfect triangles either, since they include more than three sides and curvature along the sides which are absent from a perfect triangle. Thus, the term "triangular" used in this application is considered to mean a shape similar to a triangle. The cells 2 of Hansen et al. are very clearly shaped similar to triangles.

Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5,928,280) in view of Cox (6,171,334). Hansen et al. fail to disclose connecting elements out of phase. However, Cox teaches that connecting elements 52 may be out of phase which results in the apparent advantage of providing increased flexibility of the stent. It would have been obvious to make the Hansen et al. connecting elements out of phase so that it too would have this advantage. With this modification, the connecting elements would be separated by at least two cells as defined in claim 17, noting the spacing of connecting elements 52 of Cox.

Applicant's arguments filed May 24, 2004 have been fully considered but they are not persuasive for the reasons set forth above.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (703)308-2154. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
9/27/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731